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Ain't Misbehavin'
Or, Reflections on Two Centuries of Congressional Corruption

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Charles Stewart III*

Is it possible to police the American political system -- particularly its national legislature -- against corruption? This is a question that has occupied ordinary citizens, men and women of affairs, and academics for as long as the Republic has existed. Even longer. While the intensity with which we consider this question waxes and wanes, it is fair to say that interest in political corruption (or something like it) in Congress has enjoyed a bull market for the past decade.

On the side of the mass public, and those whose livings are most tied to understanding it (i.e., politicians), concern over congressional corruption is palpable. It shows up in the titles of books ([Still] the Best Congress Money Can Buy, the Decline of Comity in Congress, Politics and Money: The New Road to Corruption); in public opinion polls that place the honesty of members of Congress above advertisers, insurance salesmen, and used car salesmen and below everyone else (Gallup 1993, 118); and in recent election results. It is evident in the occasional attempts to "reform" Congress and the political process more generally, most recently manifest in the creeping efforts to impose new restrictions on campaign fundraising and on lobbying (Congressional Quarterly Weekly Report, 5 Feb. 1994, 217-18; 26 Mar. 1994, 717-18).

Among academics, concern over corruption has been less evident, especially among empirical scholars. Indeed, some of the best scholars of Congress periodically write to argue that many of the deepest popular concerns over the health of the political process are "basically misguided" (Jacobson

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1985, 42). Only recently, with the sudden rise of the House bank scandal in the midst of the 1992 political season, has an interest in ethical considerations been rekindled among serious, mainstream political scientists who study Congress and congressional elections.

Where Public Citizen and Common Cause have rushed in, positivist political scientists have feared to tread. And for good reason. With normative political theory having such a hard time demarcating the region of ethical and unethical behavior, it has been difficult for empirical scholars to make much headway. Yet, this paper is premised on the belief that empirical political scientists have something to contribute to the broader discussion about how the political system polices itself, beyond continually demonstrating that PACs are not as bad as they seem. In general, what they (we) have to contribute is a series of methods and approaches that may help us discern whether rules and institutions set up to channel behavior are effective.

Heretofore, these methods and approaches have been mostly used to discover whether legislative policymaking comports with standard normative view of representation in substantive areas, and whether the most important mechanism designed to ensure compliance -- election -- provides the appropriate feedback to the system. With the House bank scandal, some positivist political scientists have come to use their tools of the trade in a concerted way to understand ethical behavior of legislators, both the behavior itself and whether improper behavior is punished by the electoral process.

The larger question this paper addresses is whether it might be possible to move beyond the recent House bank scandal and understand the system of ethical legislative behavior in a systematic way, and to understand that

system across American history. By the "system of ethical legislative behavior" I mean the system that seeks to ensure that legislative decisionmaking does not become "corrupt," as classically defined.¹ Thus, the focus is on the process of legislating, not necessarily on policy outcomes. The system to which I refer consists primarily of two parts: elections and the internal monitoring of legislative behavior allowed under Article I section 5 of the Constitution.

The remainder of this paper is organized as follows. Keeping with the tenants of good empirical social science, I first attend to broad questions of case selection and measurement/choice of the dependent variable. Because of the inherent ambiguity of defining the behavior the legislative ethical system is supposed to guard against, it is clear that both case selection and variable measurement must be considered together. Concretely, what sorts of behaviors or episodes are we to admit into our analysis of how this regulatory system works? While it is a commonplace to remark that answering this question at any given time is difficult -- one person's corruption is another's routine way of doing business -- the difficulty is heightened when considered historically. Here, it becomes quickly apparent that one era's corruption is another's standard operating procedure. That is the focus of Section I.

Section II abstracts from the question of defining our dependent variable to focus on how we think this "system of legislative ethical behavior" should work and does work. Elections and internal discipline are

¹The definitions I have in mind come from Webster's Ninth New Collegiate Dictionary, which in part defines corruption as follows: "impairment of integrity, virtue or moral principle; inducement to wrong by improper or unlawful means (as bribery); a departure from the original or from what is pure or correct."

supposed to be a redundant system, guarding against sustained corruption in Congress. Yet, history and even current research suggest that both of these safeguards may be fundamentally deficient. Elections are suspect because of "venal voters" and because of successful "presentation of self" strategies. Internal discipline may fail because of the low payoff for effort expended.

Sections III and IV look more carefully at two well-known cases in American history that have been the subject of study by many people concerned about legislative ethics: the House bank scandal of 1992 (Section III) and the Credit Mobilier scandal of 1872 (Section IV). These sections do three things. First, they summarize the pertinent historical details of the scandals. Second, relying on the discussion from Section I and II, they discuss how we might go about studying these scandals to get a better understanding of how ethical regulation works in Congress. Third, they report research that provides some preliminary answers to the questions raised along the way.

The final part of the paper, Section V, does two things. First, it brings into focus what we learn from comparing the Credit Mobilier and the House bank scandals, that we could not learn by considering them separately. Second, it points the way to future research into how empirical social scientists might further contribute to the national discussion about instilling proper behavior among our representatives.

Because positivist political scientists have largely ignored or finessed this topic, this paper must necessarily be exploratory. Understanding what we are up against, we may be better situated to carry out a research program of the scope the question demand.

The approach of this paper is historical, but it is not a history of congressional corruption. Such histories already exist; they make for instructive, and often entertaining, reading. (Cf. Josephy 1979; Baker 1985; Congressional Quarterly 1992; Josephson 1938) Rather, the purpose of casting a wider, historical net in this instance is to double-check the instincts that tend to govern the current scholarly research and reportage about congressional scandals.

I. Scandal: Will We Know It When We See It?

Political scientists have tended to approach the question of scandals like Justice Stewart approached pornography: We might not be able to define it, but we know it when we see it. Circumspection is to be called for in defining what constitutes scandalous or corrupt behavior, especially when viewed historically. What once was considered proper behavior could now get someone thrown in jail. Scholars who wish to study the ethical legislative system immediately run up against the changing tide of moral standards. I first address this predicament by discussing examples mostly from the nineteenth century that demonstrate the disparity in different era's standards. Faced with clearly shifting borders between the accepted and the unacceptable, between what is considered private and public behavior, scholars often resort to studying instances where the formal disciplinary mechanism of Congress has swung into play. Hence, I secondly address this difficulty by quickly reviewing this formal mechanism, discussing how the types of behavior it has targeted have also changed over time. Because so much of what interests scholars and the public about legislative ethics falls outside the formal disciplinary apparatus altogether, I will finally briefly explore where the consideration of extra-legislative transgressions will take us.

A behavioral approach to legislative ethics

One way of assessing the difficulty of defining standards of legislative behavior across time is to look at what was considered to be "proper behavior" in different congressional eras. A quick glance at episodes of congressional history reveals clearly that standards have changed over time, both among elites and among the electorates that choose elites. Here, I focus on the changing standards of the late eighteen and nineteenth centuries to illustrate what we are up against.

Looking across time, it is clear that a continuum of behavior exists. We can treat certain ethical standards as timeless, keeping in mind it was Publius in the first century B.C.E who said "no man should stand in judgment of his own case," and that the commandment "thou shalt not bear false witness" is thousands of years old. Some members of Congress have brazenly violated these dicta throughout history, and these violations have been widely recognized as such. Examples include direct payment for votes and favors, as in the West Point appointment scandal of the late 1860s, and fraudulent representations before federal agencies, as in the case of Senator Corwin mentioned below.

At the other end of the continuum, certain legislators have striven (at least publicly) to remain squeaky clean in the face of uncertain standards. One such member of Congress was John Quincy Adams, who viewed the common practice of dueling to protect one's honor as morally repugnant, and who regularly refused opportunities to represent constituents in Court for a fee, professing a belief that a legislator should offer opinions to his constituents gratis; fee-taking by legislators, even for legal work, was "of a

very questionable moral purity." (Quoted in Luce 1924, 455 and Baker 1985, 9).²

The interesting questions lie in the middle of the continuum, as we try to understand how the boundary between right and wrong has been drawn, and how legislators who were neither angels nor devils navigated the terrain marked by this shifting boundary. It is safe to say that even if the boundary's exact location has been murky at any given time, the direction of its movement has been such that the region of proper behavior has been monotonically reduced. Another way of stating this is that the boundary between public and private behavior has tended to march in a single direction throughout American history, devouring the private lives of public officials and considering more of what they do public action.

The natural place to start in seeing how standards of official conduct have changed over the past two centuries is with the person of Daniel Webster.³ Webster shows up in many stories of early legislative ethical dilemmas for two reasons. First, he was among the most influential politicians of his day -- along with Henry Clay and John C. Calhoun, he helped constitute the "Great Triumvirate" that dominated antebellum political discourse -- so that anything he did was likely to elicit attention at the time. Second, he was constantly broke. Some biographers lay the blame on Webster's poor business sense, and his obsession with living the life of the gentleman farmer. Others lay the blame on his "vivacious" socialite second wife, who encouraged his extravagant spending patterns. Still others note

²Of course, Adams did not entirely absent himself from the courts, as his participation in the Amistad case shows. See Bemis (1949; 1956).

³On Webster see Bartlett (1978) and Peterson (1987).

that his presidential ambitions demanded a constant source of funds to underwrite his travels around the country, and encouraged him to make what turned out to be awful investments in western lands, in order to demonstrate solidarity with western voters. Whatever the source of this behavior, the fact of the matter is that his early success in the law at Portsmouth and then Boston accustomed him to a style of living he never renounced throughout his life.

Webster's incessant money troubles led him to a constant search for ways to supplement his income while away from his Marshfield estate. Webster's best-known pleadings, in Dartmouth College v. Woodward (1819), McCulloch v. Maryland (1819), and Gibbons v. Ogden (1824) were undertaken in the hiatus between his service in the House from New Hampshire (1813-17) and from Massachusetts (1823-27). Nonetheless, his congressional service only slowed his law practice, rather than ending it. For instance, while complaining that his Senate service (1827-41) interfered with his law practice, Webster's papers reveal he made over \$15,000 in 1834 and nearly \$22,000 in 1835 (Bennett 1978, 204) at a time when the \$8 per diem for senators could have grossed him no more than about \$1,300 per year.

This was no ordinary law practice. Much of this search for solvency through "carrying the green bag" resulted in what we would now call "influence peddling." In particular, Webster established a series of relationships with prominent business interests of the day, and with well-heeled political backers. The most important set of relationships led him into a pattern of financial dependence on backers in New York and Boston, who bailed him out every time he got into personal financial trouble. Webster's return to the Senate in 1844, following his service as Secretary State under Presidents

Harrison and Tyler, was predicated on the understanding that his wealthy friends in those cities would make up the difference in income between what he could make in the full-time practice of law and what he could make as a senator. The size of the resulting annuity remains shrouded in history and partisan recriminations, but it was at least \$30,000 and may have been as high as \$100,000.

And then there were his dealings specifically with the Bank of the United States, which intertwined Webster enough to have him serve as director of the bank's Boston office and for him to argue 41 cases on the Bank's behalf before the Supreme Court, including the great McCulloch case.

If Webster had simply been a hired gun, faithfully representing a client or clear political principles before the courts, only a few eyebrows would be raised. But, he also saw his role as a member of Congress to serve as the Bank's agent within the institution, for which he received a fee. For instance, in writing to Nicholas Biddle, the bank's president, to explain why his fee was so high in 1831, although Webster had not recently argued any cases for the Bank in court, he stated:

The case vs. Martin, the Alabama case, is one in which little was said in court. It was quite clear both to Mr. Sergeant and myself, that we could do nothing with it. Owing to a defect in the statute, the Alabama Court had no jurisdiction. I therefore went to work, in another quarter, to remedy the law & was successful. The amending law passed, without its being suspected anywhere that it was especially useful to the Bank. It opens the Courts of the U.S. to the Bks [sic] in 4 states, where there are or are to be offices -- viz; Missouri, Louisiana, Alabama, Miss: this is of great importance in any event; and of very great, if the Charter is not to be renewed.

I bestowed good attention on this measure; which makes me willing to charge a fee in the cause itself.

Indeed I had half a mind to write 1000 instead of 500 -- but am well satisfied as it is. (quoted in Barrett 1978, 129)

Two years later, Webster wrote Biddle in the midst of the Bank's rechartering effort. In that letter Webster notified Biddle of pressures that were being imposed upon him to change his public support of the Bank, and went on to write, "I believe my retainer has not been renewed or refreshed as usual. If it be wished that my relation to the bank be continued, it may be well to send me the usual retainers." (quoted in Baker 1985, 8)

It could be said that Webster's behavior put him on the cutting edge of concern over legislative conduct early in the nineteenth century. The politically mercurial Webster depended on the income he derived from an institution that required periodic legislative attention; he used his legislative position to woo prospective clients; and when legislative business became too overwhelming for him to practice a sufficient volume of law, he turned to wealthy backers to make ends meet. What makes Webster's behavior vexing to modern sensibilities is that it was apparently widely-known, both within Washington and back in his adopted state of Massachusetts. Whig newspapers in Boston, for instance, acknowledge the annuity given to him after his return to the Senate in 1845. Webster's behavior was naturally the target of scorn on the Democratic side. Democratic papers exaggerated reports of his financial dealings to discredit him. John Quincy Adams was given to saying that "All Webster's political systems are interwoven with the exploration of a gold-mine for himself." (quoted in Josephy 1979, 189) But, Webster was still politically influential in Washington and a popular speaker for fellow Whigs on the stump. So it is hard to conclude that Webster's behavior was uniformly condemned.⁴

⁴One possibility presents itself here: that Webster was able to get away with his relationship with the Bank because of corrupt dealings with the Massachusetts legislature, and within the halls of Congress. However, given

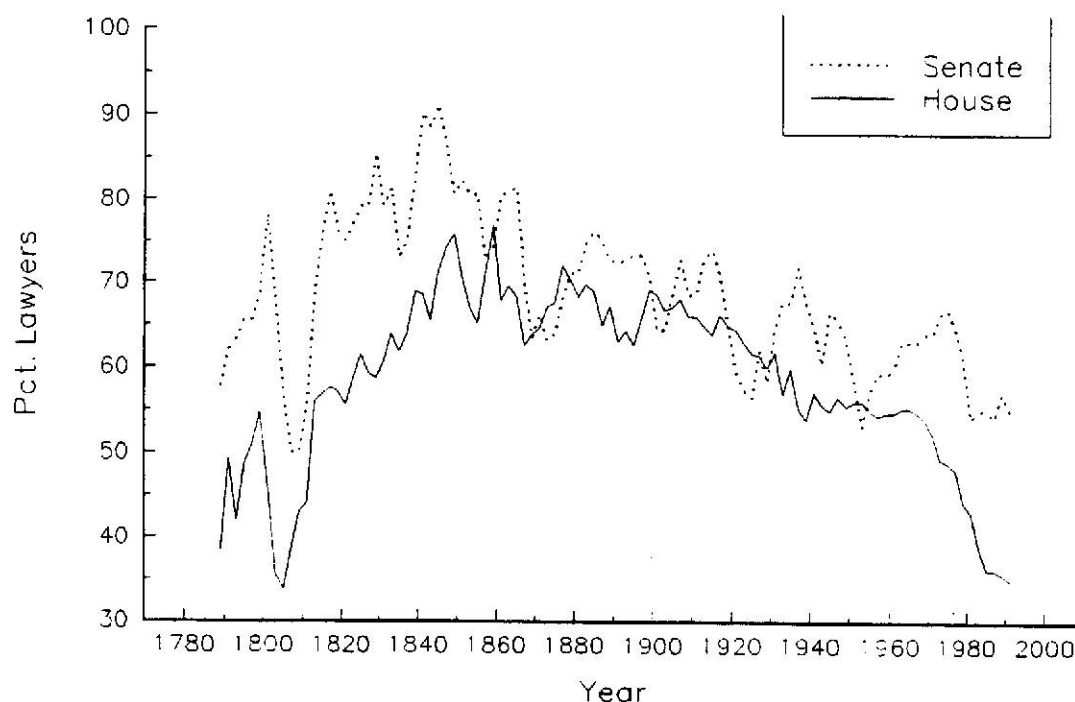
At least Webster's dealings with the Bank and his northeastern business patrons were relatively public. Other legislators' dealings were less so, and they involved even more questionable dealings, even for the time. For instance, in the heat of the Bank War in the early 1830s, it came to light that as many as one-quarter of the members of Congress had benefitted from unsecured bank loans, totalling over \$1.6 million, a sum several times the annual salaries of the entire Congress. Congress ended up not investigating these charges, after John Quincy Adams reminded his colleagues that previous attempts to investigate similar charges had failed, since all the political factions in Congress seemed to be implicated. (Baker, 1985, 8, citing Luce)

Webster's prominent career as a litigator was but the most conspicuous example of members of Congress in the antebellum period representing clients before courts and executive agencies. From the beginning, it was clear that members of Congress were perfectly suited for the work of representing constituents before federal agencies and courts. First, MCs were mostly lawyers. Indeed, the incidence of attorneys in Congress was higher before the twentieth century than in this century. (See Figure 1.) Second, before the days of interstate legal partnerships, the local member of Congress was often the most convenient legal representative of the provinces in Washington. Third, the legislative workday was conducive to keeping one's "day job" as an attorney. Congress typically met after noon and into the early evening, leaving mornings for sporadic committee work and attention to the matters of

Webster's chronically poor financial condition, if the Massachusetts General Court was bought, it was by someone other than Black Dan. Hence, while some contemporaries looked on Webster with disapprobation, wide segments of society probably viewed Webster's behavior as tolerable.

locals constituents. And fourth, even then, there was casework to be done, claims to be filed, pensions to be procured.

Figure 1. Percent of the House and Senate whose last occupation was the law prior to entering Congress, 1789 - 1989.



Between the War of 1812 and the Civil War, it was common for members of Congress to receive fees from their constituents for representing them in claims proceedings before federal agencies.⁵ Occasionally, such activity resulted in clear cases of abuse, as when Ohio Senator Thomas Corwin won a \$500,000 fraudulent claims suit before the Mexican Claims Commission on the heels of the Mexican War. (Corwin's embarrassment was heightened by the fact

⁵On the issue of conflict of interest in the federal government generally in the nineteenth century see White (1956, 1958), Association of the Bar of the City of New York (1960, 1970), and Getz (1966).

that his part in the fraud did not come to light until he was Treasury Secretary in 1852.)

Short of such extravagant fraud, however, federal officials in all branches and geographic locations were entangled in dealings that created clear conflict of interest. Members of Congress had appeared as representatives of claimants before the claims commission established under the Jay Treaty; several senators and representatives, plus Vice President Dallas, were said to have appeared before the claims commission set up after the War of 1812; and at least Sens. Webster, Benton (Mo.) and Soule (La.) appeared before the Mexican War Commission, in addition to Corwin. In general, the system for handling claims against the federal government before the Court of Claims was created in 1855 was ripe for corruption. Members would hire out their services to constituents to ply their wares in ex parte proceedings in the bureaucracy. If the closed-door approach failed, the member could, of course, introduce private legislation as part of the paid service.

With a part-time legislature, and the expectation that legislators would make the bulk of their living in their normal career pursuits, it was natural that many legislators would receive retainers in return for representing wealthy or incorporated clients. It was further natural that members would advertise their services in the newspapers. Indeed, the early system of representation virtually pre-supposed such behavior. Only later, when the abuses of this system became clearer, would systematic reform be considered, and sometimes passed.

Parenthetically, modern proponents of term limits for members of Congress evoke a simpler time, when legislators were called, Cincinnatus-like,

from their hometowns, to which they later returned. While such a view of Congress is naive -- even when congressional careers were short, it was only because Washington was a dismal place for professional politicians to spend their time -- it also loses sight of the fact that citizen-legislators must have real careers besides politics. When the behavior that constitutes those careers is made illegal, it is natural for MCs to want to replace the lost income somehow -- abolish representing claimants will lead to higher congressional pay. The experience of the nineteenth century shows that it is all too easy for the interest associated with the legislator's non-political career to become intertwined with the problem of representation.

Members of Congress often represented their clients in Washington, making some money on the side. There was another avenue for making money on the side, that was open to virtually all legislators, lawyers or not: the speechmaking circuit. In recent years this activity has attracted a lot of attention. However, members of Congress were taking speaking fees long before PACs were even created. As with all such dealings, there was a mix of motives behind pursuing and taking these fees. Casual inspection of the private papers of members of Congress over the years has led me to believe that the practice was wide-spread, well-known, and mostly undertaken with little expected in return for the payment, other than an entertaining after-dinner speech or lecture on the Chautauqua circuit.

Whether undertaken for pay, or not, and whether done in the open, or not, all the behavior recounted in this section is now widely regarded as unethical. In many cases, it is outright illegal, or contrary to explicit rules of the House and Senate. For instance, in the late 1960s the ABA code of professional responsibility prohibited the use of the name of an elected

official on a law firm's letterhead, unless the official was actually engaged in the practice of law. Congress has subsequently gone further, with the Senate barring its members from actively practicing law in 1983, and the House following suit in 1991. Relationships such as those between the Bank of the United States and Daniel Webster would now be regarded as influence peddling and racketeering. And, taking honoraria from groups is now strictly limited, and subject to detailed reporting requirements.

Returning to the nineteenth century, even before modern Watergate sensibilities, and even before "progressive" sensibilities of the turn-of-the-century, there was a slow accretion of laws barring certain behavior by members of Congress outright, and the public discussion began in earnest about where the boundary of legal-but-unethical behavior lay. For instance, in the 1850s, in response to the revelations about Sen. Corwin's dealings, Congress added itself to the list of federal officials prohibited from representing clients before the federal government. Indeed, before the rash of concern over congressional ethics that began anew in the 1960s, the 1850s through the 1870s saw the greatest production of conflict-of-interest status aimed at Congress in its history.

A formal approach to legislative ethics

It is also possible to see how ethical concerns have changed over time by examining the types of formal complaints the two chambers of Congress have pursued over the years. In general, formal proceedings against members due to their behavior fall into two categories: expulsion and censure. A third proceeding, exclusion, sometimes proceeds for ethical reasons, but rarely so. Expulsion, under Article I, section 5 of the Constitution, requires a two-thirds vote of the entire chamber. Short of expulsion, censure expresses the

disapproval of either chamber. The punishment of censure requires the member to receive the verbal rebuke of the chamber from the presiding officer, while standing in the well of that house. In recent years, both chambers have resorted to punishments that omit the verbal rebuke, styling the censure a "condemnation," "reprimand," or "denunciation." In most cases punishment stops with the passage of the censure resolution, although in others a further punishment might be meted out.⁶

Figure 2 graphically illustrates the timing of formal disciplinary proceedings in both chambers from the first Congress to the present.⁷ This timeline combines censure and expulsion proceedings, plus efforts to exclude members for reasons other than election challenges. I have coded the charged offenses into four categories: (1) physical and verbal attack of members against each other, (2) disloyalty, (3) corruption, including financial misconduct, and (4) other.⁸ The circles in the figure indicate the number of proceedings in each category for individual years, with larger circles indicating more cases. The smallest circles indicate a single case. The large circle in the Senate graph represents 13 expulsion cases for support for the rebellion in 1861.⁹

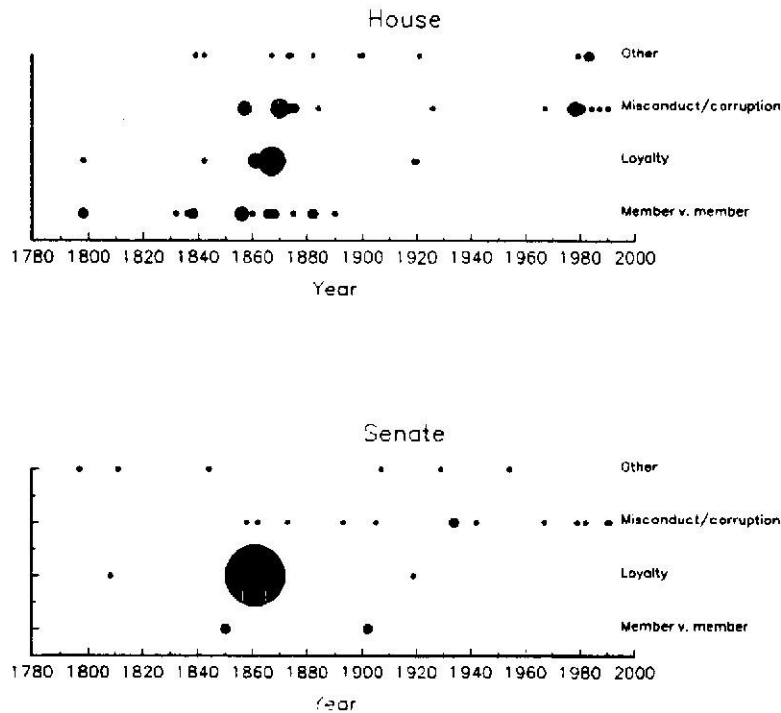
⁶For example the Democratic caucus adopted a rule in 1980 to strip automatically a committee or subcommittee chairmanship from anyone who had been censured by the House or had been indicted or convicted of a felony carrying a sentence of at least two years. The Senate ethics committee has recently codified a series of punishments for wrongdoing in that chamber. See Congressional Quarterly Weekly Report 5 March 1994, 522.

⁷The sources for these figures include two congressional documents, Joint Committee on Congressional Operations (1973) and Senate Committee on Rules and Administration (1972), plus Congressional Quarterly (1992).

⁸The most common charge in this final category was "Mormonism" and polygamy.

⁹Although most of those charged with disloyalty were from seceding states, and were actually expelled, two Senators charged with aiding the rebellion were from states that remained in the Union; two expulsion cases

Figure 2. Formal disciplinary proceedings in Congress, 1789 - 1991.



Aside from the greater prevalence of disciplinary proceedings in the House than in the Senate, the most obvious trend in the data is the shift in concern, from offenses that reflected on the integrity of the national union, to offenses that reflected on the integrity of individual legislators. Prior to and including the Civil War, most disciplinary proceedings were against members who were charged either with disloyalty or with assaulting colleagues.

associated with the Civil War were not successful.

The greatest concentration of disloyalty charges were during the secession crisis and immediately afterwards, and involved legislators from seceding states, but not entirely. For instance, the three members of the House who were expelled for "supporting the rebellion" were from border states that remained loyal to the Union. Benjamin Harris (D-Md.) beat an expulsion attempt in 1864, but was finally censured for declaring that the South had asked to be left in peace and not subjugated "and may God almighty grant it may never be subjugated." (Joint Committee on Congressional Organization 1973, 140)

Member versus member assault was the most common reason for disciplining members of Congress before the Civil War. The first case of congressional fisticuffs that we know about involved Matthew Lyons (Anti-Fed., Vt.) and Roger Griswold (Fed., Conn.). It began in on New Year's Day 1798, when Griswold taunted Lyons about the latter's military record (Josephy 1979, 109-110; Baker 1985, 7). Lyons returned the favor by spitting tobacco juice in Griswold's face. A resolution to expel both men failed at the time, after the Speaker had gotten both to promise, from the well of the House, to behave themselves. A month later, Griswold retaliated by using his cane to attack Lyons on the House floor; Lyons defended himself with some handy fire tongs. This time, too, a motion to censure both men failed.

The death of Jonathan Cilley (Jacksonian-Maine) at the hands of William Graves (Whig-Ky.) in 1838 led to the only disciplinary case involving dueling representatives. Statements made in the investigation and on the House floor indicated that dueling was a common activity among House members. Dueling was a practice that had become fashionable among Washington's officers during the Revolutionary War, persisting more strongly in the south than the north in the

decades to follow (Richard 1986, 131-35). It was so common that it was reported that the congressional election of 1816 alone precipitated over a dozen duels. Cilley had simply been doubly unlucky. First, Henry Wise (D-Va.), Graves's second, egged on the contestants after the first shots had missed their marks. (Duelling was properly a game of "chicken" in which the display of courage was the operative principle. No one was supported to get hurt, resulting in the norm that if both contestants had missed on the first shot, the match was over.) Second, Cilley, the expert marksman of the two, missed Graves three times (again, according to the norm), while the novice Graves eventually shot Cilley in the stomach on his third try, killing him instantly. In the end, Graves failed to be expelled for killing Cilley, and Wise failed to be censured for serving as a second. Very shortly thereafter Congress outlawed dueling nationally.

The best-known case of members physically attacking one another came in 1856, when Rep. Preston Brooks (D-S.C.) caned Sen. Charles Sumner (Opposition-Mass.) on the Senate floor. Sumner had made a fiery speech -- even his supporters considered it intemperate -- attacking the "slave oligarchy," including a personal attack on Sen. Andrew Pickens Butler (D-S.C.), Brooks's uncle. Brooks was aided in his assault by Laurence Keitt, also of South Carolina, whose task it was to keep other senators at bay while Brooks waled at Sumner's head with his cane. A motion in the House to expel Brooks and Keitt failed, after which they both resigned and were triumphantly reelected by their South Carolina constituents to fill their own vacancies. Another alleged accomplice of the affair, Henry A. Edmundson (D-Va.) was spared even censure.

It is easy to dismiss these, and other, instances of physical attack as the product of an earlier, less civilized time. Yet, as current events in democratizing countries remind us, there is no reason to imagine that deep divisions within societies with strong animosities will not boil over into legislative venues. If the functioning of democracies requires of its citizens toleration, and of its elites even greater forbearance than one would expect in a barroom, then it is not unreasonable to place breaches of conduct such as dueling, clubbing, and drawing pistols in anger alongside vote-buying and graft. Because what was eating at the nation's fabric before the 1860s was an inability of sections to live together, it is not surprising that Congress paid more attention to curbing fighting words among its members than them taking money to represent constituents before the pension bureau.

Before the Civil War the types of behavior that the House and Senate addressed in its disciplinary proceedings went to the core of the Union itself, and neither chamber acquitted itself very well. The Civil War represented a marked change in the types of disciplinary cases that occupied the formal machinery of Congress. The War settled the sectional/nationalist division that so often gave rise to personal assaults, but also provided opportunities to temp public officials. One can trace from the Civil War the path that led to the "Gilded Age," through the corruption of the Grant Administration. The 1860s, for instance, gave rise to charges that members of the House had been involved in selling appointments to the military academies, charges which resulted in the censure of Benjamin Whittemore (R-S.C.) and Roderick R. Butler (R-Tenn.) in 1870.¹⁰ The Credit Mobilier scandal had its

¹⁰Whittemore was subsequently excluded from House membership when he was reelected to his seat.

roots in the 1860s and the extravagant grants given to the Union Pacific in its effort to build the transcontinental railroad. That scandal will be treated in greater detail below.

The timeline expressed in Figure 2 is consistent with the informal discussion of legislative behavior at the beginning of this section. Prior to the Civil War, the individual behavior of legislators tended to be beyond the reach of the chambers, unless that behavior affected the official business of Congress, narrowly construed.

Another trend that is not apparent from Figure 2 is that Congress has increasingly allowed itself to examine the behavior of its members further back in time. The parliamentary law on the subject had made it impossible for the two chambers to punish its members for any behavior prior to being sworn in for the current Congress. Thus, charges of corruption that preceded members were off limits. As the most recent proceedings have demonstrated, this precedent is no longer operative. For instance, the censure of Gerry Studds in 1983 for sexual impropriety was punishment for behavior that had occurred a decade before.

The limits of behavioral and formal analysis

While an examination of the formal proceedings of Congress is a good place to start in getting the lay of the land, the formal proceedings are a crude net for capturing cases of (possibly) irresponsible legislative behavior. The reasons for this are manifold, and include the following:

First, formal proceedings may not be worth the cost. The pursuit of formal sanctions against members depends on the calculation of expected benefit given expected effort expended. Expulsion proceedings were always unusual, and they have gotten even rarer over time, because of the high hurdle

for expelling members: a two-thirds vote. Along the same lines, too, before the turn of the century, votes to punish members were highly partisan, which suggests that the most borderline cases of unethical conduct by majority party members probably was suppressed altogether: What was the point of the minority pushing a case when the majority would just band together to defeat it? The only likely venue to try such a case would be the electoral arena.

Those concerned with the current state of legislative ethics can at least take heart in the change in the twentieth century on this score. Up until 1900 less than 2/5 of the censure and expulsion cases in the House involved members of the majority party; the same statistic is less than 1/4 in the Senate. Since then, nearly 3/4 of House discipline cases and 3/5 of Senate cases have involved the majority party.

In addition, there is the further problem of changing standards discussed in the first part of this section. On the one hand, it is unlikely that a member would be censured by the House these days for uttering that "the eyes of the Speaker are too frequently turned from the chair you occupy to the White House."¹¹ On the other hand, it is hard to imagine Daniel Webster's behavior going unpunished today.

There is also the problem of anticipated reactions that may forestall formal proceedings in the House. In the twentieth century many well-known cases of ethical and legal entanglements do not show up among the formal proceedings of Congress, for various reasons. For instance, James Michael Curley was convicted of mail fraud in January 1946, but the Biographical Directory of the American Congress merely states that he "declined to seek nomination" in 1946. The sequential sex scandals involving Wilbur Mills (D-

¹¹Remarks of William Stanberry (Ohio) to Speaker Andrew Stevenson.

Ark.) and Wayne Hays (D-Ohio) from 1974 to 1976 ended with both men voluntarily giving up their committee chairs and then leaving the House, fully aware that the House (or at least the Democratic caucus) would take action if they did not. Still, their behavior does not register on the official proceedings of the chamber.

There is finally the problem that neither the formal proceedings of Congress nor most historical excursions into ethical dilemmas capture truly ethical predicaments such as the House bank scandal or the "salary grabs" of 1816 and 1873 -- in other words, behaviors that are so unique to the congressional setting that a law would never be written to guide behavior. Yet, it is in such ambiguous situations where the moral character of legislators is most likely to affect legislative behavior, and where voters' responses are the most likely to reflect their own moral judgements. Yet,, such episodes are the most subjective to assess, making it difficult to establish their methodological standing when we study them.

Finally, across time Congress has gradually removed from its precincts oversight over a wide range of behavior that falls within the popular understanding of what constitutes ethics. For instance, congressional bribery is typically handled by federal prosecutors.¹² Thus, since 1941 there have been at least 33 indictments of members of the House for financial misconduct of various sorts, with approximately 2/3 resulting in convictions, and none entering on the books as censure or expulsion cases (Congressional Quarterly 1992, 70-83). Thus, in order to get a better sense of congressional misconduct, we have to go beyond the formal proceedings of the House, and

¹²Thus, the House has currently suspended consideration of ethical charges against Dan Rostenkowski (D-Ill.), pending the outcome of the Justice Department probe.

examine the dockets of the district courts, of the Ethics Committees, and even of the Federal Elections Commission.

The failure of well-known latter-day scandals to get ensnared in official congressional proceedings suggests two things about the past. First, there were likely "scandals" and charges of improper or illegal behavior by legislators that are lost to history, due both to the poor state of journalism in the past and to the sketchy coverage of the historical record as it pertains to individual MCs in history. Second, there must have been occasions in the historical Congress when members were sanctioned with the threatened loss of congressional power or reelection, and chose to take matters into their own hands, either by resigning from the House or not seeking reelection, or by stepping down from positions of leadership within Congress.

The imprecise ability of the official machinery of Congress to register clear examples of ethical lapses finally suggests an obvious methodological point. With microscopic coverage of Washington politics the rage, it is now relatively easy to describe independently the universe of unethical behavior -- or at least candidates for that universe -- and then ask which mechanisms worked in which way in response. Such close attention to Congress is new, however (Cf. Jacobson and Kernell 1985).¹³ Hence, it is not implausible to imagine that the contemporary swelling of the rolls of ethically implicated legislators is a function of a more sensitive measuring device, rather than of a change of behavior. And, it suggests that the types of lessons we are likely to draw in comparing nineteenth century cases of corruption with twentieth century cases will be in those instances where the

¹³Between 1961 and 1985 alone, the number of members of the press accredited to cover Congress tripled, from roughly 1500 to 4500 (Stewart 1989, 6 fn. 4).

ethical lapse is severe, which suggests a serious limitation of such cross-time historical comparisons.

II. On the Effectiveness of Election and Internal Sanction

The previous section discussed the difficulty of knowing a case of corruption when we see it, and for getting a sense of how corruption has changed over time. This section identifies the issues that emerge when we try to understand historically the mechanisms that were established to ferret out "moral monsters" from Congress: elections and internal proceedings.

To the degree that instances of congressional corruption involve a representative profiting at his or her constituents' expense, elections should be an effective way of policing legislative behavior, particularly in the House, where members are up for election every two years. Yet, immediately upon stating this, it becomes clear why the electoral connection may be a weak reed to enforce widely-accepted ethical standards: Few representatives who have been identified as corrupt benefitted at the direct expense of their constituents. Even those who have personally fed extravagantly at the public trough have rarely been total legislative slackers.

The case of Adam Clayton Powell, who clearly did qualify as a legislative slacker late in his career, sits at the top of the collective mind because of its prominence. More typical, however, are cases such as Robert Sikes (D-Fla.) and Nicholas Mavroules (D-Mass.), both of whom were known for their tireless pursuit of military contracts for their districts, and reaped easy reelection for their efforts year-after-year, only to run afoul of House rules (in the case of Sikes) or the law (in the case of Mavroules).

A corrupt representative may still be worth his or her effort, an insight which leads us in two directions: toward understanding when Congress

itself will intervene to police the behavior of its members, and toward understanding when the electoral system would react to punish a misbehaving member. I will deal with the latter path first.

The electoral system

The electoral system formally establishes a relationship between a representative and his or her constituents. History and theory tell us that there is no one single way to structure this relationship (Davidson 1969; Wahlke, Eulau, Buchanan, and Ferguson 1962). One of the most vigorous strands of scholarship within political science and American political history has been in understanding how this relationship has changed over time (Burnham 1970; Brady 1988).

Over time, that relationship has changed from one organized around party to one organized around individual appeals. The rise of the "personal vote" (Cain, Ferejohn, and Fiorina 1987) has been well-studied by political scientists, particularly the effects of insulating incumbents from macro-level forces in the electorate. How should the decline of party and the rise of the personal vote have affected elections as a method of policing ethical behavior?

There is no strong prior answer to this question. Some factors point to a weakening of this mechanism. A representative who has cultivated a constituency by constantly trumpeting his accomplishments on his constituents' behalf (see Fenno 1978), and convincing them that he is like them may be able to weather ethical storms better than one whose relationship to constituents is purely one of a shared party label. Also, as Jacobson (1993) has pointed out in a recent essay, the new electoral environment has changed so that challengers no longer fill the role of providing a reasonable alternative for

a voter who is repelled by the moral behavior of his or her representative. To the degree that the political system now offers more voters the option of a tarnished but effective legislative expert versus a pristine but naive political neophyte, then the rise of the personal vote clearly undermines the ability to purge Congress of all but the worst "moral monsters."

Furthermore, the stronger role of party organizations in picking nominees before the advent of the nominating primary may have provided a more efficient method of dispensing with partisan embarrassments than we have today. Under a system where partisan voters are happy to endorse any high-quality candidate of their party and where there is no "incumbent advantage," there would be no reason for a party not to replace tarnished incumbents, if all they cared about was the aggregate composition of the chamber.

The personal tie may work the other way, however. In particular, if members of Congress are increasingly re-elected due to their personal qualities, then the one who lives by the sword may perish by the sword. This may be especially true to the degree that incumbents stress non-partisan qualities like trustworthiness, honesty, and "family values," and de-emphasize controversial issues or loyalty to the political system as a whole. There is evidence that something like this has been at work in recent elections. Peters and Welch's (1980) seminal work on the subject suggests that "electoral retribution" is visited most on incumbents with reported personal moral peccadillos and charges of bribery leveled against them, rather than against members whose failings involve the electoral system itself or conflict of interest. Findings such as these have been replicated elsewhere (e.g., Abramowitz and Segal for the Senate)

There is evidence in the historical record, however, that individual moral failings have always been more fatal to continued political success than failings associated with how one treats the political system as a whole. For instance, of the 20 members of the House who were subject to sanction due to "abuses to political institutions" (e.g., assaulting other members, defaming the Speaker, uttering disloyalties, etc.) before 1900, 80% were reelected to Congress. This reelection rates compared to the overall 54% reelection rate during the nineteenth century, and the 14% reelection rate among members charged with corruption or other personal misconduct during the same period.

That the rise of the personal vote may encourage the purging of miscreants is consistent with the party and urban politics literatures that grew up in the 1950s and 1960s (e.g. Banfield and Wilson 1963). The overturn of machine politics in most instances came by deposing elites and masses whose view of politics was "private regarding." Hence, the continued eclipsing of party by a personal vote may represent the triumph of reform over corruption in the nation's capitol, as it did in city halls around the country a generation ago.

Internal policing of Congress

Giving Congress the right to judge election returns and to expel members for misconduct is designed to serve as a redundant system, in particular allowing for more national standards of conduct to be applied when particular constituencies step outside the mainstream. Viewed historically, Congress has not acquitted itself very well in its handling of this power. Yet, although it is clear that both chambers continue to be reluctant moral judges at best, it is possible to build a case that Congress has become more vigorous over the

years in acting where constituents have been even more reluctant to act, and have done so in a more judicious manner than in the past.

It is common to make adverse judgments about Congress's abilities to punish its members when they transgress even widely-understood ethical standards. Congress is said to be lax on two counts. First, it rarely punishes its members for ethical shortcomings: only four members of the House and fifteen¹⁴ senators have been expelled; only 28 representatives and 10 senators have been censured, denounced, or reprimanded for their behavior. Second, any casual reading of recent episodes of ethical lapses reveals a common pattern: slowness to act on the part of congressional leadership, extreme conservatism on the part of the chambers' ethics committees, and a tendency to debase the currency of punishment, replacing censure with the less onerous "denunciation," with the further less onerous "reprimand."

These harsh judgments on Congress need to be tempered, however, in light of the historical record. I concentrate here on two components of this internal system: its partisanship and its institutionalization.

Disinterested observers would probably agree that a well-oiled ethical oversight mechanism should operate independently of partisanship. It would be naive to expect all vestiges of partisanship to absent themselves in considering ethical matters, however. It is important to note, therefore, that partisanship seems to have diminished in the consideration of ethical conduct cases over the past two centuries.

The most obvious way to see this is through roll call voting. Table 1 reports all those cases of disciplinary proceedings in the House from 1861 to

¹⁴All but one of these expulsions was due to supporting the Confederacy during the Civil War.

1990 that have elicited recorded roll call votes on the House floor. (We start with 1861 because that coincides with the solidification of two-party politics in Congress.) The numbers in the 5th column report the index of party dissimilarity on the roll calls that were held in those cases.¹⁵ The 6th column reports the same index for all roll calls during that Congress.

¹⁵The index of party dissimilarity is calculated as follows: First, calculate the percentage of each party that voted aye on a particular measure. Second, calculate the absolute value of the difference of these two percentages. This figure is the measure of party dissimilarity for a particular vote. The numbers in table 1 are averages across many roll calls.

Table 1. Party dissimilarity in votes to punish House members, 1789 - 1990.

Cong.	Year	Case	Type of proceeding	Index of party dissimilarity	
				To discipline	All votes
37	1861	John Clark	Expulsion/ rebellion	0.92	0.53
37	1861	John Reid		0.90	0.53
38	1864	Alexander Long	Expulsion & censure/ treasonous utterance	0.92	0.63
39	1866	Lovell Rousseau	Expulsion & censure/ physical attack	0.69	0.55
40	1867	Hunter	Censure/ Debate	0.99	0.58
40	1868	Fernando Wood	Censure/ Offensive utterance	1.00	0.58
41	1870	Benjamin Whittemore	Expulsion & censure/ Corruption	0.21	0.55
41	1870	Roderick Butler	Expulsion & censure/ Corruption	0.48	0.55
42	1873	Ames & Brooks	Expulsion & censure/ Credit Mobilier affair	0.42	0.51
43	1875	John Y. Brown	Expulsion & censure/ Insult to representative	0.97	0.56
51	1890	William Bynum	Censure/ Offensive utterance	0.99	0.71
67	1921	Thomas Blanton	Expulsion & censure/ Printing obscenities in C.R.	0.41	0.50
94	1976	Robert Sikes	Reprimand/ Fin. misconduct	0.01	0.29
95	1978	Edward Roybal	Censure & reprimand/ Lying to comm. & fin. misconduct	0.34	0.19
96	1979	Charles Diggs	Expulsion & censure/ Misuse of funds	0.31	0.36
96	1980	Charles Wilson	Censure/ Fin. misconduct	0.24	0.36
98	1984	George Hansen	Reprimand/ Fin. misconduct	0.31	0.22
101	1990	Barney Frank	Censure & reprimand/ sexual misconduct	0.31	0.40

A number of trends are apparent in this table. In addition to the well-known dip and rebound of party dissimilarity in the House as a whole during the twentieth century, party dissimilarity has also taken a significant dip in votes on disciplinary cases. There are obviously many reasons for this pattern. Discipline votes probably share in the other politics of the chamber at any given moment. Too, the change in what has been considered under formal disciplinary procedures probably has had an effect. In the nineteenth century the most partisan disciplinary cases were those that involved policy differences or personal attacks among members. The Whittemore and Credit Mobilier cases -- both about corruption -- demonstrated that it was possible for partisanship to be muted when corruption was clearly the matter at hand in the nineteenth century. Thus, the muting of partisanship in disciplinary cases partially reflects the extinction of loyalty cases and cases driven by policy differences, and an occupation of the disciplinary mechanism with charges of corruption or other individual, non-policy-specific misconduct.

Contributing to the decline in partisanship is also undoubtedly a change in the formal mechanisms for pursuing discipline cases. Prior to the creation of the ethics committees in both chambers -- 1964 in the Senate and 1967 in the House -- the venues for considering charges of ethical violations were partisan: typically standing committees, dominated by members of the majority party, occasionally select committees, also dominated by members of the majority. Thus, in all but the most unusual situations, any disciplinary recommendations and findings of fact were immediately suspect, giving rise to partisan wrangling once the matter reappeared on the floor. Particularly in the nineteenth century, partisan division extended to committees, making it

common for the minority delegation on the investigating committee to oppose its committee's recommendations.

The rise of the bipartisan ethics committees has had two effects on lowering the partisanship of disciplinary moves. First, by striving to bring in unanimous decisions, the committees have provided little cover for continued partisanship once disciplinary matters reached the floor. Second, by striving for non-partisanship, the committees have tended to seek out a weak middle ground. Expulsion, the motion in the past most likely to elicit partisan voting patterns, has virtually disappeared.¹⁶ Censure, the second-most partisan motion, now typically shows up as an amendment from the floor. The typical motion that is always voted on -- to reprimand -- is weak enough so that the miscreant's partisan colleagues are not averse to supporting it, while those of the opposite party are required to vote for it, lest they look soft on misconduct.

Mention of the ethics committees also brings up the issue of the institutionalization of ethics oversight in Congress. First, we now have ethics committees in each chamber, appointed to maintain a partisan balance, and filled with reluctant "safe" members. While taking direction from the chambers, the ethics committees may also initiate investigations on their own motion. This contrasts with the nineteenth century, when the investigation of an ethical scandal first had to clear the hurdle of creating a select committee or specially-empowering a standing committee, in order for an investigation to proceed. Once a committee was empowered to look into the

¹⁶Two century's worth of failed expulsion attempts is probably another reason why no one takes expulsion seriously any more, except for notorious felony convictions.

matter, it was dominated by the majority party, and the partisanship from the committee often spilled over onto the later floor consideration of the matter.

More telling, though, are the "auto pilot" provisions for regulating congressional behavior, which moves the degree of institutionalization up a notch. Certain internal sanctions are now automatic -- get indicted, lose your chair. And, of course, much of the nettlesome work of regulating legislative behavior takes place outside of Congress, such as in the court system and within the Federal Elections Commission.

To summarize, the past two centuries have seen an evolution of the disciplinary mechanisms in the Congress. First, the character of offenses processed through the formal mechanism has changed. Members of Congress no longer settle grudges at 40 paces, and verbally attacking the Speaker or making outrageous policy pronouncements no longer bring threats of expulsion or censure. Rather, what the Congress now occupies itself with are cases of bribery, financial misconduct, and personal misconduct. Second, proceedings are much less partisan than they once were. Third, the internal proceedings are now more formal, regularized, and court-like; much of the regulation of member behavior now takes place outside Congress altogether.

III. The House Bank Scandal

Having remarked on the general contours of the system for regulating the ethical behavior of members of Congress, I now turn to two cases in congressional history where the system was put to the test, the House Bank Scandal of 1991-92 and the Credit Mobilier Scandal of 1872-73. As I develop the cases, I intend to make it clearer why they together offer an interesting pair of cases for gaining insights into how scandals have been handled in the House of Representatives over time. For the moment suffice it to say that

they represent rare instances when numerous members of the House were caught up in an episode that cast a spotlight on the ethical behavior of Congress. Within the context of the two centuries when these two scandal occurred, they were both the scandals that reached the deepest into the institution. Examining such cases, with multiple participants, is important because it has been cases like these that have garnered the most scrutiny from both Congress and from the public; therefore if any effects are to be discerned it will be with these sorts of cases. For expository purposes, it is most helpful to begin with the House Bank scandal.

The behavior that precipitated the House bank scandal went back at least fifty years, although scandal and the bank have been synonymous since its informal creation in the nineteenth century.¹⁷ The bank itself grew out of the necessity to pay members their salaries and disburse official travel funds. Gradually, first through informal arrangements and then formally, a payroll office was established under the control of the House Sergeant-at-Arms. By at least 1889, it was not only issuing checks for Members' pay, but it was also providing them check cashing services.¹⁸

The history of the bank, was a sorry one, filled with corruption, scandal, laxity, and favoritism. Regulations were few and often unenforced. Record-keeping was primitive. Following yet another Sergeant-at-Arms financial scandal in 1947, the GAO was charged with auditing the Sergeant-at-

¹⁷Much of the material for this section was taken from House Report 102-452, "Inquiry into the Operation of the Bank of the Sergeant-at-Arms," House Committee on Standards of Official Conduct, 10 March 1992. See also Congressional Quarterly Weekly Report, 8 Feb. 1992, p. 283-89 and Congressional Quarterly Almanac (1992), 23-46.

¹⁸Testimony given by the House sergeant-at-arms in the Poland Committee investigation of the Credit Mobilier scandal revealed that members could cash checks at least as far back as 1868, including third-party checks that could be cashed without endorsements.

Arms's financial records, a vehicle that yielded regular criticisms of the bank's operations ever since. Interestingly, prior to 1978 the audit reports were not made public, being received only by the Speaker and the Sergeant-at-Arms. They regularly criticized the bank for the practice that finally precipitated the most recent scandal: The audits expressed misgivings about the volume of member overdrafts, which the Sergeant-at-Arms regularly defended as draws on the Members' next month's salaries. Further, the bank was regularly criticized for its laxness in enforcing its few regulations, and generally did not enforce new regulations prompted by GAO audits.

Coinciding with the audit reports becoming public in 1977, the GAO reports stopped complaining about overdrafts. Yet, the overdrafts themselves continued. The overdrafts came to light again when the Sergeant-at-Arms, Jack Russ, and a bank employee were caught by the GAO floating checks at the bank in 1988. In subsequent audits the GAO discovered that Russ and the employee continued to cash bad checks at the bank, and that other promised reforms had not been implemented. The Speaker became involved; the Sergeant-at-Arms eventually issued a memorandum outlining further restrictions on check cashing at the bank. Most of these regulations addressed the checks cashed by non-Members, but a few were aimed at limiting the overdrafts of members on their own bank accounts.

These regulations, too, were honored in the breach, leading to a further GAO report critical of Russ in 1990, which this time was noted in the press. Finally, a GAO report critical of Members' overdrafts was released in September 1991, yielding a storm of negative press. Two weeks later the House voted to close the bank as of the end of the year; simultaneously the House

Ethics Committee began an investigation of the bank. To round out the story, Russ abruptly resigned in early 1992.

After several months of investigation, the Ethics Committee and the Democratic leadership decided that the Committee's attention should be paid to overdraft "abusers." The Committee's majority report originally was intent upon only publicly naming these abusers -- two dozen in all -- leaving less frequent over-drafters out of the spotlight. Yet, Republican agitation and rank-and-file Democratic skittishness scuttled the leadership's plans. The House eventually voted to release the names of everyone who had bounced a check with the bank over a thirty-nine month period stretching from July 1988 to October 1991.

The Ethics Committee's first report, released 1 April 1992, named 24 "abusers" of their banking privileges. the abusers were generally members who had overdrawn their accounts by more than their next paycheck eight times during the report period. Most of the currently-serving abusers had written more than 200 overdrafts. The second report, released 16 April 1992, named 303 other over-drafters, including some with a larger number of overdrafts than some of the abusers, but who had committed larger overdrafts less frequently.

The first column of Table 2 shows the distribution of the number of overdrafts for the whole House, including those who were no longer members as of April 1992. Columns 2 and 3 separate this distribution by party. Democrats were slightly more likely to bounce checks than Republicans: 68% of the Democrats bounced at least one check, versus 57% of the Republicans. It is among the over-drafters themselves that the partisan differences were so

great: Democratic over-drafters averaged 90 bounced checks while Republicans averaged 47.

Table 2. Number of checks bounded in the House bank by members of the House of Representatives, 1 July 1988 to 3 October 1991. Includes all members who served during this period.

Checks bounced	Total	Democrats	Republicans
0	36.1%	31.6%	43.0%
1-10	32.7	33.0	32.0
11-50	13.5	12.5	15.0
51-100	6.8	9.1	3.5
101-200	4.8	6.1	3.0
201-300	1.2	1.3	1.0
301-400	1.2	1.3	1.0
401-500	0.8	1.0	0.5
501-1000	2.8	4.0	1.0
N	498	297	200

Note: Bernard Sanders, an independent, had 5 overdrafts.

Source: Congressional Quarterly Weekly Report, 18 April 1992, pp. 1006-7.

In other work (Stewart, forthcoming) I have shown that the number of overdrafts by members of the 101st Congress can be explained in intuitive ways by members' electoral security, party, seniority, age, and income. That is, the most electorally secure, Democrats, and senior members tended to bounce more checks, while older and wealthier members tended to bounce fewer.

This paper is about policing misbehavior, so I will leave the question of who bounced checks behind, except to note that there was something suspiciously akin to an "arrogance of power" behind many of these overdrafts. Also, keeping in mind the discussion in Section I, it is not clear on the face of it that the behavior that constituted the scandal was corruption. This ambivalence was shared by voters, as expressed in the 1992 National Elections

Study. Thirty-eight per cent thought kiting checks disqualified members from office, 21% thought writing bad checks was not serious enough to disqualify one from office, and 32% equivocated depending on the number of bad checks (Dimock and Jacobson 1994).¹⁹ Still, the dynamic that emerged was so similar to other instances when clear-cut corruption has been alleged that examining the scandal further is likely to be instructive.

So, what about the ability of the House and of the electoral system to police the "abusive" behavior represented in the scandal? Internally, the story is one of fits and starts, although it is not an uncommon story. The relationship between the House leadership over several decades and the bank (through the Sergeant-at-Arms) appeared bent toward securing for House members a service they could receive nowhere in the marketplace. Ending the most outrageous practices at the bank took decades of effort, and only came to an end following some vigorous newspaper reporting and partisan pressure from the minority Republicans.

Within the House itself, the first votes on the floor masked the intense partisanship of the proceedings. The ethics committee's plan to release only the names of the 24 "abusers" was endorsed with only a 10-4 committee vote, indicating that a majority of the Republicans on the panel actually opposed it. The Democratic leadership pushed ahead with this proposal, but it was eventually derailed by a revolt by Republicans, led by a group of freshmen dubbed the "Gang of Seven," and capitulation by the Democratic rank-and-file. In the end the public drum beat of outrage was so loud that the resolution calling for full disclosure of overdrafts passed unanimously, 426-0.

¹⁹Ten percent of the sample did not know enough to express an opinion on the subject.

Most fortuitously for the electoral system, the names of overdrafters were released in the midst of the most critical period for congressional campaigns: the spring (Jacobson and Kernell 1983). Consequently, if the scandal was going to inflict electoral damage, a number of electoral mechanisms could work. Those who were mired the deepest in the scandal could choose to retire. Whether or not they retired, higher-quality challengers might choose to enter the race, either challenging in the incumbent's primary or trying to gain the right to challenge the incumbent on election day. Finally, even if an implicated member made it through the gauntlet of renomination, there was plenty of time for constituents to absorb the scandal, consider the challenger, and punish the incumbent on election day.

As a number of studies have shown (Groseclose and Krehbiel 1994; Jacobson and Dimock 1994; Stewart 1993) the scandal had the type of electoral effect a generation weaned on Jacobson and Kernell would expect: The effects were strongest at the earliest stage (deciding whether to retire), moderately strong at the intermediate stage (renomination) and weakest at the final stage (the election itself). This finding has prompted Gary Jacobson (1993) to speculate in a recent essay about why the electoral system might work, but still the electorate would feel bad about it: The electoral system weeded out the worst bank abusers without the clear hand of the electorate's agency. So, to a casual observer -- which is what most voters are -- the electoral system actually failed in this case.

Another dynamic which has not been noticed by many students of the bank scandal would also reinforce the sense that the electoral system failed in 1992: To the degree there were any direct consequences of the scandal in November, they may have been due to reapportionment.

Table 3. Influence of House bank scandal on 1992 congressional election.

Variables	Regression coefficients		
	Whole Sample	Redist.	No. Redist
Constant	0.16 (0.05)	0.58 (0.07)	0.099 (0.050)
Average vote share in 1988 & 1990	0.40 (0.06)	-0.004 (0.087)	0.46 (0.06)
Unopposed in 1988 & 1990	0.26 (0.04)	-0.0002 (0.056)	0.32 (0.05)
Pct. of money raised by incumbent	0.27 (0.03)	0.18 (0.03)	0.27 (0.03)
Challenger experience	-0.035 (0.010)	-0.047 (0.011)	-0.029 (0.014)
Democrat	0.012 (0.008)	-0.001 (0.010)	0.014 (0.011)
Redistricting, 5-point scale	0.026 (0.008)	0.017 (0.005)	...
Seniority	-0.0018 (0.0008)	-0.0004 (0.0011)	-0.0019 (0.0008)
Age	0.00004 (0.00054)	-0.0019 (0.0008)	0.0004 (0.0007)
Committee chair	0.017 (0.027)	...	0.0003 (0.024)
Ranking minority member	-0.022 (0.015)	0.048 (0.016)	-0.038 (0.030)
No overdrafts	0.024 (0.009)	0.004 (0.012)	0.023 (0.010)
Number of overdrafts (hundreds)	-0.006 (0.007)	-0.039 (0.009)	-0.0037 (0.0048)
n	326	78	248
r ²	.53	.58	.51

Evidence of this possibility is presented in Table 3, which reports the results of a standard regression to estimate the effects of participation in

the scandal on the general election. The first column shows results when the entire sample of incumbents running for reelection is considered. The strongest scandal effect is the one that divided those who were and who were not mired in the scandal: avoiding the scandal altogether was worth 2.4% in November, while being more involved (by kiting more checks) shows a weak, and statistically insignificant effect.

The next two columns divide the sample between those who faced a significant redistricting, and those who did not. In general, the election outcome in 1992 among those facing a new constituency was the result of factors pertaining to the present election: money raised, the challenger's experience, the incumbent's objective characteristics, and the degree of involvement in the scandal. Among those facing substantially the same constituency, prior support looms large to begin with, with challenger experience and involvement in the scandal having a smaller effect.

Finally the scandal itself showed different effects among the two groups of incumbents. Among those facing a substantially new constituency, involvement in the scandal exhibited a dose response. Writing 100 bad checks on the bank was nearly as bad as facing a challenger who had prior electoral experience (3.9% vs. 4.7%). At the same time, incumbents with substantially similar constituencies were punished or rewarded for simply being involved in the scandal. Whether the effects was to punish overdrafters or reward the non-overdrafters cannot be told without further work.

Hence, a disturbing counterfactual to consider is what would have happened had the House bank scandal broken in the spring of 1990, instead of 1992. If that had been the case, more incumbents could have fallen back on a store of goodwill with their constituents, and fewer incumbents (particularly

Democrats) would have had to worry about the opposition being ready to field a quality candidate.

Dimock and Jacobson's recent paper (1994) examining evidence about the effects of the House bank scandal on the 1992 election tells a cautionary tale of a different sort. There they find a sizeable minority willing to punish overdrafters, but a tendency of these people not to be represented by incumbents with many overdrafts. Further, voters tended to generosity when asked to tell how many checks had been overdrawn by their representative, a generosity that was compounded when the incumbent faced a weak challenger.

IV. The Credit Mobilier Affair

The Credit Mobilier scandal is at least known among all schoolchildren as a milepost in the dark underbelly of American history, although few people know its details. Historians tend to regard it as the most serious political scandal of the nineteenth century (e.g., White 1958). In brief, the scandal centered around the building of the transcontinental railroad and an attempt by its westward builder, the Union Pacific Railroad, to reap maximum profits from the undertaking.²⁰

The Union Pacific had been given a series of subsidies in the 1860s to lay the portion of the road going from east to west, eventually to meet up in Promontory Point, Utah with the road being built eastward by the Central Pacific. The financial dealings of the Union Pacific were Byzantine, like all railroad schemes of the time, the details of which remain hazy to this day. The historical record suggests that the directors of the corporation faced two problems: First, the major way of financing the Union Pacific venture beyond

²⁰Accounts of the Credit Mobilier affair vary widely. Cf. Crawford (1880), Josephson (1936), Fogel (1960), Trotter (1966), and Josephy (1979).

the personal fortune of the directors was supposed to be through selling stock, but the railroad was prohibited by an Act of Congress from selling the stock at below par value. Because the going proved to be more difficult than first supposed, the value of the stock rapidly dropped to below par value, leaving the railroad with no obvious way to raise funds. Second, the subsidies granted the Union Pacific to build the road were considered extravagant by its opponents, so the directors needed a way to demonstrate the "fairness" of the subsidies by encountering high construction costs.

To solve these twin, and related, problems, the directors of the Union Pacific secretly bought the Pennsylvania Fiscal Agency, turned it into a construction company, and renamed it the Credit Mobilier of America. The Credit Mobilier was to do the actual construction of the Union Pacific road. Credit Mobilier could charge the Union Pacific inflated rates, thus solving the second problem. The first problem would then be solved, because the Credit Mobilier could turn around and buy from the Union Pacific its stock, at par value. One collateral fact became important: because of the lucrative contracts that appeared to be going to the Credit Mobilier, its stock eventually climbed tremendously in value, even when the Union Pacific -- the obverse of the same corporation -- was being shunned.

This financial relationship, although suspect, was not unusual among railroad schemes of the time, nor was it this arrangement per se what led to the hint of scandal. Rather, the scandal came from the actions of one of the Railroad's directors, Oakes Ames, a wealthy Bostonian who was also a member of Congress from 1863 - 1873. Court and congressional records later revealed that Ames took it upon himself to buy a few friends in Congress, using the rapidly appreciating Credit Mobilier stock, and the 42nd, when the scandal

came to light. He approached carefully-chosen members, informed them of a no-lose investment scheme, by which he would sell them shares in the Credit Mobilier Corporation at its par value (\$10). If the investment went sour, he would buy back the shares at their original price.

Table 4 gives the names of these well-chosen members, along with the positions they held during the 40th Congress, when Ames was plying them with stock. (For the sake of brevity Table 4 omits the implicated senators.) Ames's expressed intent was to place stock with "men who will do the most good to us." Those who would do Ames "the most good" were not those who wavered on the railroad subsidy issue, but safe members who were in positions to watch out for the Union Pacific's interest. Thus, he mostly targeted senior members who were on important committees, or up-and-comers, who would later take positions of greater influence in the House (Cf. columns 2 and 3).

Table 4. Members of the House implicated in the Credit Mobilier scandal and their committee assignments. Excludes senators and House members who became senators. (Numbers in parentheses represent rank on the committee.)

		Position in ...	
		40th Cong.	42nd Cong.
<u>Representatives</u>			
William Allison	Iowa	Ways & Means (4)	---
John Bingham	Ohio	Claims (chair)	Judiciary (chair)
James Blaine ^a	Maine	Appropriations (4) Rules (4)	Speaker Rules (chair)
George Boutwell ^a	Mass.	Judiciary (2) Ed. & Labor (4)	---
B. Boyer	Penn.	Military Affairs (2)	
James Brooks ^b	N.Y.	Rules (ranking) Ways & Means (ranking)	Ways & Means (ranking)
Schuyler Colfax	Ind.	Speaker Rules (chair)	Vice president
Henry Dawes	Mass.	Elections (chair) Exp., Navy Dept. (2)	Ways & Means (chair)
Thomas Eliot	Mass.	Commerce (chair) Freedman's Bureau (chair)	---
James Garfield	Ohio	Military Affairs (chair) Exp., War Dept. (3)	Appropriations (chair) Rules (3)
William Kelley	Penn.	Coinage, Wts. & Measures (chair) Naval Affairs (2)	C., W. & M. (chair) Ways & Means (3) Reform in Civil Service (chair)
Glenni Scofield	Ohio	Elections (2) Indian Affairs (5)	Naval Affairs (chair)
James Wilson	Iowa	Judiciary (chair) Revision & Unfinished Business (4)	---

^aPoland Committee testimony indicates Blaine and Boutwell most likely did not participate in the Ames scheme.

^bBrooks was a Democrat; the rest were Republicans.

At the time Ames was approaching colleagues with his investment scheme, dissension rocked the directors of the Union Pacific, leading to a law suit in 1868 brought by Henry McComb. McComb's suit would be prominent in the

proceedings to come, for two reasons. First, the rumor of the suit caused some of those Ames had approached to back out of the deal and redeem their shares. Their backing out in many cases further complicated a complicated affair, once it became public. Second, it was court documents from this law suit that eventually made it to the New York Sun, a Democratic paper, which printed some incriminating correspondence between McComb and Ames on 6 September 1872.

When the Sun printed evidence that Ames had tried to bribe members of Congress on the Union Pacific's behalf, the Credit Mobilier affair was thrust into the midst of the 1872 election (or "canvas," as it was called then). Immediately, seven current members of the House, three senators, and the vice president were implicated in the Sun accounts as having been approached by Ames. (One former and one deceased member of the House were also implicated. More came to light in the later Poland Committee investigation.) True to the partisan nature of the affair, and of newspapers at the time, the Sun's Republican cross-town rival, the New York Times covered very little about the allegations, referring to the whole matter as the Credit Mobilier "slander," suggesting that the charges were entirely trumped-up.

Charges of bribery are very serious, particularly when they implicate the presiding officers of the two houses of Congress, and the chairs of the judiciary; rules; ways and means; appropriations; naval affairs; coinage, weights, and measures; and civil service reform committees; not to mention two committee chairs in the Senate. They were particularly potent, considering the sorry history of the Grant Administration and the dozens of congressional inquiries about corruption in that quarter. (See Josephy 1979, 232-40; White

1958) And, they were politically vexing, being levelled in the heat of a presidential and congressional campaign.

Congress was not in session when the charges were made, so it was not until afterwards that committees were appointed to investigate them. Three committees were eventually appointed, two in the House and one in the Senate. In the House, the "Poland committee" was appointed to investigate the charges of bribery directly, and the "Wilson committee" was appointed to investigate the relationship between the Union Pacific Railroad and the Credit Mobilier of America. Subsequently, the Senate appointed a committee to investigate the whole affair from its perspective. Because we are interested in the scandal's political effects and in the way Congress has policed its members' behavior over time, and because it was the primary source that uncovered wrongdoing, we will focus on the political repercussions from the Poland Committee investigations.

Like all other committees of the time, the Poland Committee was dominated by the Republican party. The Poland Committee met steadily for three months, eventually throwing open the normally closed committee-room doors due to the clamor for publicity about the affair. The committee's proceedings created a sensation in the press, as all the principals came and confronted the committee's charges. McComb defended his characterization of Ames's strategy of buying vigilance among a small group of well-placed members of Congress. Ames presented his behavior in a more benign light, denying that any of his actions were intended to influence legislation. And, most of those otherwise implicated in the scandal detailed how, in one way or another, they either did not understand the nature of the investment, walked away from it, or got out early-on. In summarizing the testimony they took on the affair,

the Poland Committee was left to characterize the evidence as "painfully conflicting" (H. Rpt. 42-77, p. v).

The recommendation from the committee was curious: The committee found that Ames had indeed offered members of Congress stock in the Credit Mobilier, hoping to influence their legislative behavior. They recommended he be expelled. They also recommended the expulsion of James Brooks, the Democratic leader of the House.²¹ However, the members other than Brooks who were said to have taken stock were let off the hook by the committee, and ultimately by the House. The resolution to expel Ames and Brooks that was reported out of the Poland Committee was referred to the Judiciary Committee, where the recommended punishment was changed to censure. Ames and Brooks were condemned by the House during its last week in session. They returned home broken men, both dying within two months of their condemnation.

There are some interesting parallels between the Credit Mobilier the House bank scandals. In both cases, the best-known miscreants were members of the majority party. The majority party had been firmly entrenched in the House for a number of Congresses. Misbehavior in each case seemed to associate itself with more senior members of the majority party, as well. Too, both cases involved a matter that did not affect a major issue of the day directly, but did come close enough to allow voters and commentators to draw parallels. That is, the House bank scandal could evoke anxieties about the savings and loan crisis, while the Credit Mobilier affair touched on the behavior of rapacious railroads and robber barons. Consequently, in both

²¹Brooks had been a government board member on the Union Pacific Railroad. As such he was prohibited from holding stock in the Union Pacific. The investigation discovered that Brooks owned stock both in the Union Pacific and Credit Mobilier, using his son-in-law as a front.

cases the scandals were gift wrapped for use by the opposition in the next election, which they both did. An important difference in this regard, however, is the timing of the elections: The House bank scandal "broke" well in advance of the 1892 election, while the Credit Mobilier scandal broke in the midst of the 1872 election. These timing issues may have been critical to explaining what eventually happened in both cases. One other parallel should be mentioned: Both the House bank scandal and the Credit Mobilier scandal were interjected into the first congressional elections in a decade following reapportionment and redistricting.

What were the observable ramifications of the Credit Mobilier scandal? First, did those caught in the scandal's net suffer at the polls? Figure 3 provides one answer to this question. Figure 3a shows the distribution of net percentage swings for northern Republican incumbents between the 1870 and 1872 elections; Figure 3b shows the same distribution for Democrats.²² Notice first that although the Republican Grant administration had been tarred with ethical allegations and scandals, most Republicans running for reelection gained in electoral security between 1870 and 1872, while most Democrats lost ground. Among all northern congressional races in 1872, Republicans on aggregate did 2% better than in 1870. Second, none of the Republicans implicated in the scandal who ran for reelection did worse than the median swing among incumbent Republicans.

²²Because of the rapidly changing electoral dynamics in the south due to Reconstruction, states in the former confederacy are excluded from this discussion.

Figure 3. Vote swing among incumbent northern Republicans (top) and Democrats (bottom) between 1870 and 1872.

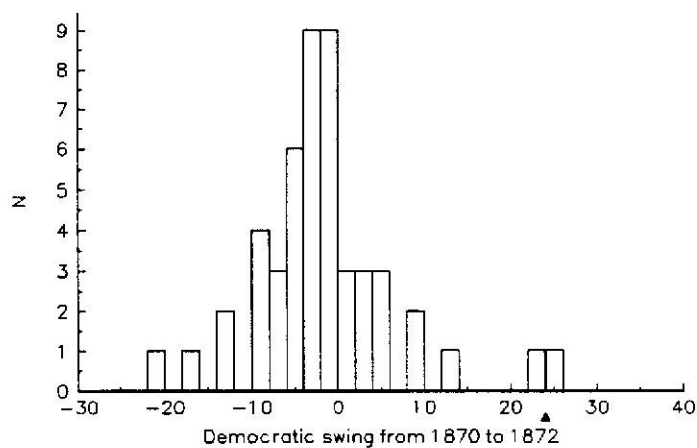
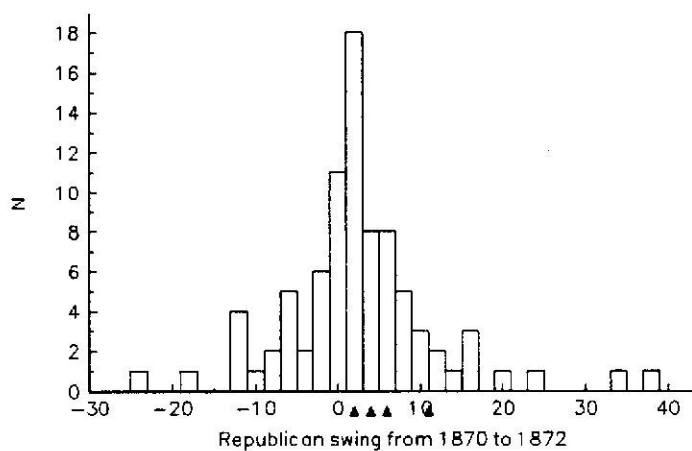


Table 5 is an attempt to put this question within a multivariate context. Among incumbents running for reelection we regress their 1872 vote percentage on their 1870 percentage, a measure of how well the incumbent's presidential candidate did in the state, and dummy variables describing the

incumbent's party and whether the incumbent was implicated in the scandal. We have run the analysis separately for districts that underwent "major" realignments between the 1870 and 1872 election.²³ Because of the relatively small number of people running for reelection who were identified as being involved in the Credit Mobilier scandal, the standard errors for this one dummy variable are huge. But, the size of the coefficients verify that what is shown in Figure 3 is unlikely to be due to the confounding effects of other obvious political factors.

²³Judging whether a district underwent a "major" realignment of congressional districts was based on Martis (1982).

Table 5. Prediction of vote share for incumbents running for reelection in the North in 1872.

Variable	Coefficient (standard error)
Constant	9.23 (8.04)
Vote share in 1870	0.47 (0.11)
Vote share of incumbent's presidential candidate in that state	0.37 (0.10)
Democrat	2.26 (1.68)
Major redistricting	1.63 (1.23)
Credit Mobilier involvement	6.21 (3.86)
N	88
r^2	.44
s.e.r	6.4

If this effect is not just the luck of the draw, the scandal may have helped some members because of its partisan context. With the initial public charges coming just weeks before the congressional elections, local partisans may have taken this to be just another cruel-hearted tactic of the Democrats, and rallied to the defense of those who were "slandered" (in the words of the New York Times). Hence, if those who were involved in the affair were to be punished, it would more likely happen after further information had come to the fore, rather than just the reports in the New York Sun.

Unfortunately, the next congressional election was not for another two years. By then, another scandal had emerged to occupy the attention of the

voting public -- the "salary grab" of 1873 -- along with the continued presence of the Grant administration, not to mention the Panic of 1873. The election of 1874 was a disaster for the Republicans: they lost a net of 96 seats to the Democrats, falling from 68% to 35% of the House membership, and losing control of the House to the party of "Rum, Romanism, and Rebellion" for the first time since the Civil War. Historians have attributed much of the loss in 1874 to the Republicans' ethical problems in general, confounded with poor economic performance, which makes this election not much different in results from the "Watergate election" of precisely a century later.

At the individual level, it is difficult to discern the effects of the scandal: Only two of those who were involved in the scandal ran in 1874, James Garfield and "Pig Iron" Kelley, both of whom won large majorities in safe partisan districts. As an historical footnote, only one member of the Poland committee was returned to office in 1874. Most tellingly, the chairman of the committee, Luke Poland, saw his vote share go from 65% in 1872 to 37% in 1874.

V. Discussion and Conclusion

There are two levels on which to draw conclusions from this paper: at a particular level, in considering the cases discussed in sections III and IV, and at a general level, in considering where we go from here in understanding the regulation of legislative behavior across the past two centuries.

In considering the factors that gave rise to the scandals discussed in the last two sections, how they were treated within the House, and how they were received by the electorate, a number of points stand out that help to put the two centuries in stark relief. To the modern researcher delving into the Credit Mobilier scandal, the most obvious point of comparison is the

difference in informational quality and richness. The Poland and Wilson committees operated under a short deadline, with no staff, and with little opportunity for independent corroboration of information beyond the testimony in the committee room. The reports issued by the committees were nothing more than brief summaries of highly conflicting testimony, followed by transcriptions of that very same testimony. Press reports were sensationalistic, taking on the predicted partisan tone of the newspapers involved. Not surprisingly, the independent scholarship about the affair has clarified the matter only marginally, because of the confusing raw material on which scholars have to work. What clarification has been forthcoming has been the product of a century's effort.

While the House ethics committee also operated under deadlines and in a partisanly-charged context, the worlds of the two investigations are entirely different. To aid in the ethics committee's investigation, financial experts from the General Accounting Office were detailed over to reconstruct the financial records of the House bank, before findings were reached. Relatively non-partisan news reports from the local paper, the Washington Post, and from national news organs produced a constant stream of independent reportage from the time the scandal broke in the fall of 1991 until its denouement in the spring of 1992. The final report of the ethics committee, including the listing of who kited how many checks, was clear and to the point. Finally, in those areas where the ethics committee was not entirely forthcoming -- such as in reporting dollar amounts in the cases of the "abusers" -- independent organizations such as Congressional Quarterly weighed-in to match-up disparate pieces of information. In short, with multiple sources of information it was possible for members of the House and the public to draw independent

conclusions in real time. And, of course, scholars have had a field day in immediately analyzing the data that were generated from the affair.

To Progressives operating at the turn of the century, one of the most important watch-words was "publicity." In comparing the Credit Mobilier and House bank scandals, we can see where a century of publicity has gotten us: Congress has institutionalized its information-gathering and auditing apparatus; open government laws have provided the grist for the independent press's mills. An important consequence for the functioning of the American democracy is that voters have better information on which to judge their representatives, and members of Congress have better information on which to judge each other. For scholars, too, interested in how the system functions, it is now easier to understand the functioning of the ethics oversight system by several orders of magnitude, compared to the last century.

The comparison of the two eras also underscores the changing nature of partisanship over the past century. Both the Credit Mobilier and House bank scandals were partisan affairs. Yet, the Credit Mobilier affair was partisan wall-to-wall. That is, relying on their followers to interpret everything about the scandal through partisan eyes, members who were implicated were encouraged to wear their indictments as badges of honor; committee and floor proceedings were highly partisan, with only a slight relenting on the votes to censure Ames and Brooks. Contrast this with the House bank scandal, where those implicated could not hide behind the partisan loyalties of their constituents, either individually or collectively. Democrats could not dismiss the drum beat of New Gingrich and the "Gang of Seven" as a partisan canard. One result is that whatever electoral punishment was meted out because of the Credit Mobilier affairs probably redounded to the Republicans

generally in 1874 and 1876, as the party of corruption. The punishment due to the House bank scandal is likely to redound to the miscreants themselves, or to incumbents generally, rather than to the majority Democrats, on whose watch the scandal emerged.

One final point is worth mentioning. The electoral calendars were different in the two eras. In the nineteenth century there was a considerable "lame duck" session following the November election, and the new Congress typically did not reconvene until December of the following year. The Credit Mobilier affair was investigated by members who in some cases were already slated to retire from Congress. Had the affair occurred under the current electoral calendar, the House investigating the scandal would have been more electorally responsible.

Moving from the particular to the general, both the comparison of the two cases and the general recounting of the difficult history of congressional ethics suggests a collection of hypotheses and empirical puzzles to be investigated by empirically-oriented social scientists in the years to come. I conclude with a brief listing of some of those here.

1. The relationship between reform and perquisites of office. We observe across time punctuated movements that restrict what members of Congress can do to earn a living outside Congress, along with boosts in what they make from congressional service. In recent years the two movements have been explicitly linked, as in the restrictions on honoraria that were traded for an increase in House salaries in 1991. There are similar empirical patterns in the past, although the links have been made less clear in the historical literature. For instance, denying members of Congress the ability to represent constituents before federal agencies in the 1850s coincided with

a permanent abolition of the congressional per diem and a tripling in the implied congressional salary. Finally, when such trades are made, what is the marginal rate of substitution between private earnings and congressional earnings?

2. Ethical restrictions and the choice of a congressional career. Most of the ethical restrictions that have been imposed on members of Congress have particularly affected two classes of legislators: attorneys and members without investment-based wealth. When called on to impose these restrictions, has Congress tended to divide by profession and wealth? Has the imposition of these restrictions been a reason why the number of attorneys in Congress has gradually declined over the years?

3. The source of support for legislative ethics among voters. Modern scholarship has suggested two major source of support in the electorate for ethics legislation and for "ethical" candidates: (1) well-educated "new class" voters who reject particularistic conceptions of politics and (2) partisan voters who seize ethical lapses to pummel the opposition. Yet, with the plethora of public opinion studies into congressional elections, we still know little about how wide or deep support for ethical behavior is when contrasted with other values that voters hold dear. And, we know even less about whether support in the past was due to "other regarding" or to more strictly partisan motivations.

4. The effectiveness of auto-pilot mechanisms. The past two centuries have seen Congress devolve its responsibility for policing the behavior of its members to the courts and executive branch agencies. Has this devolution indeed changed the behavior of legislators? Has it actually led to a greater degree of scrutiny? (This question is similar in form to the question about

whether giving over monetary policy to an independent federal reserve has resulted in "better" monetary policy than Congress would enact itself.)

* * *

The newest decline in the standing of Congress in the public's eye has begun to coax social scientists out of their reluctance to consider the tough intellectual questions about the ethical behavior of legislators. As this research goes forward, it will be important to keep in mind that Congress has rarely been highly-regarded in American political life, and that the dance to define what is ethical and to enforce ethical standards is one that is as old as the Republic. A brief introduction to the history of the subject reveals that the American political context has changed so substantially over the past two centuries that it may be that considering the past brings us no more than just entertaining stories. Still, congressional historians (and political historians more generally) have not done much more than recount the same stories over and over again. By paying attention to a wider variety of cases than just the odd, sexy scandal that periodically comes our way, we will gain insight into the important topic of keeping a Republican government accountable to its people.

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